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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,174	03/23/2004	Sanjeev K. Sharma	SAMINF/001A	4832
20995 7590 09/23/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER STEPHEN EMEM O				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
09/23/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary

Application No.

10/808,174

Applicant(s)

SHARMA, SANJEEV K.

Examiner

EMEM STEPHEN

Art Unit

2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05/01/08.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-27 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1448 or PTO-600) Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. The objection to Claim 23 is withdrawn in view of Applicant amendment.

Response to Arguments

3. Applicant's arguments, filed 05/01/08, with respect to Ginzburg have been fully considered and are persuasive in view of the declaration. The 102 rejection of 11/16/2007 has been withdrawn.
4. Claims 1, 11, 18, and 23 are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 11-13, 18, 23, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by US Pub. 20040203828 A1 to Mirchandani et al.

Regarding claims 1, 11, 18, and 23, Mirchandani discloses a method of load balancing in a terrestrial wireless communication system(see fig. 1) including an access node (access point 20), the method comprising: communicating data wirelessly between the access node (access point) and a plurality of terminals (communication unit 14) via a plurality of channels [12] (see figs. 1-2, and par. 26), wherein the plurality of terminals and the access node (access point) form a wireless local area network [local coverage area 13] (pars. 41-43); determining, at the access node, an overloaded channel from the plurality of channels (see fig. 5, and pars. 47-52); and transferring, at the access node, a load from the overloaded channel to a less loaded channel of the plurality of channels (par 51 lines 7-14, par. 58 lines 7-12, and par. 59).

Regarding claims 12-13, Mirchandani discloses the apparatus of claim 11, wherein the control module (see fig. 2, and par. 44, i.e., controller 21) and the memory are embedded in the access point (par. 48).

Regarding claims 26, Mirchandani discloses the apparatus of claim 11, wherein each channel includes a plurality of links (see figs. 1-2).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 2-10, 14-16, 17, 19-22, 24-25, and 27 are rejected under 35 U.S.C.

103(a) as being unpatentable over Mirchandani in view of US Pub. 2003/0134642 A1 to

Kostic et al.

Regarding claims 9, 10, and 17, Mirchandani discloses a method of load balancing in a terrestrial wireless communication system including an access node (see fig. 1), the method comprising: providing plurality of channels between the access node (access point) and a plurality of terminals such that the access point is in data communication with the plurality of terminals via the plurality of channels (see figs. 1-2, and par. 26), determining an overloaded channel from the plurality of channels (see fig. 5); selecting a link from a plurality of links in the overloaded channel; and transferring the selected link to a less loaded channel of the plurality of channels based on at least one of: the quality of service level required for the selected link and a received signal strength indication value in the less loaded channel (pars. 18-19, 48-49, par 51 lines 7-14, par. 58 lines 7-12, and par. 59).

However, Mirchandani fails to disclose determining an overloaded channel based on at least one of: the number of packets pending in each of the channels and bandwidths, which are currently being used in each of the channels.

Kostic discloses determining an loading based on at least one of: the number of packets pending in each of the channels and bandwidths which are currently being used in each of the channels; based on at least on of: the quality of service level required and a received signal strength indication value in the less loaded channel (pars. 20, 22-23, and 37-38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Mirchandani, by using the determined number of packets and bandwidths which are currently being used in each of the channels in overloaded channel determination as taught by Kostic for the purpose of maximizing data rate.

Regarding claims 2, 14-16, and 19 -22, Mirchandani discloses the method of claim 1, wherein the determining comprises: calculating loads of each of the plurality of channels, determining the overloaded channel from the plurality of channels based on the calculated loads; and selecting a link from the overloaded channel (pars. 18-19, 48-49, par 51 lines 7-14, par. 58 lines 7-12, and par. 59). However, Mirchandani fails to disclose calculating loads based on at least one of: the number of packets pending in each of the channels and bandwidths, which are currently being used in each of the channels. Kostic discloses calculating loads based on at least one of: the number of

packets pending in each of the channels and bandwidths which are currently being used in each of the channels (pars. 20, and 38).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Mirchandani, by calculating loads based on at least one of: the number of packets pending in each of the channels and bandwidths which are currently being used in each of the channels as taught by Kostic for the purpose of maximizing data rate.

Regarding claims 3-8, the combination of Mirchandani and Kostic discloses the method of claim 2, wherein the transferring is performed in case the quality of service level required for the selected link is met in the less loaded channel, wherein the transferring comprises swapping the selected link of the overloaded channel with a link of the less loaded channel (Mirchandani, pars. 18-19, and 48-49; Kostic, pars. 20, 30-33, and 38).

Regarding claims 24-25, and 27, the combination of Mirchandani and Kostic discloses wherein each channel includes a plurality of links (Mirchandani see figs. 1-2).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMEM STEPHEN whose telephone number is 571 272 8129. The examiner can normally be reached on 8-5 Mon-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571 272 7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ES
09/02/08